IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (PIL) (LODGING) NO. 1341 OF 2004

1. Mrs. Ameeta Shah)
of Mumbai, Indian Inhabitant, residing at)
Bakhtavar, Opp.Colaba Post Office,)
Mumbai-400 005.)

2. Colaba (P.O) Advance Locality Management)
an association of residents of Colaba having)
its address at Opp. Colaba Post Office,)
Mumbai-400 005.)

3. Bakhtavar (Colaba) Association of)
Apartment Owners, an Association of)
Owners of Apartments in the building)
'Bakhtavar' having their address at Bakhtavar)
Opp.Colaba Post Ofice, Mumbai-400 005)..Petitioners

Versus

1. State of Maharashtra, through the)
Principal Secretary (Environment),)
Mantralaya, Mumbai.)

2. The Mumbai Municipal Corporation,)
a statutory Corporation constituted under the)
Mumbai Municipal Corporation Act, 1888)
with its Head Office at Mahanagar Palika)
Marg, Mumbai-400 001.)

3. The Collector, Mumbai, having his office at)
Old Customs House, Shahid Bhagat Singh)
Road, mUmbai-400 001.)

4. The Mumbai Port Trust,)
a statutory body corporate governed by)
the Major Port Trusts Act having its Head)
Office at Port House,Ballard Estate,)
S.V. Marg, Mumbai-400 001.)

5. Director General of Fisheries,)
Fisheries Department, Ministry of)
Agriculture, Department of Animal Husbandry)
and Dairying, Government of India having)
his office at Botawala Building, P.M.Road,)
Near Horniman Circle, Mumbai-400 001.)

6. Union of India, through the Secretary,)
Ministry of Forests and Environment,)
New Delhi.)..Respondents

Mr. D.J. Khambata with Mr.Gautam Patel instructed by M/s. Gagrat & Co. for the petitioners.
Mr. R.M.Sawant, Government Pleader, for respondent Nos.1 and 3.
Mr. E.P. Bharucha instructed by M/s. Mulla & Mulla & Cragie Blunt and Caroe for respondent No.4.
Mr. S.S. Pakale for respondent No.5.
Mr. Suresh Kumar for respondent No.6.

CORAM: **DALVEER BHANDARI, C.J.** &
DR. D.Y. CHANDRACHUD,J.

DATE: AUGUST 19, 2004.

ORAL JUDGMENT (PER DALVEER BHANDARI, C.J.)

We have heard the learned counsel for the parties at some length.

2. On the Court's direction on 10th April, 2003 in Writ Petition No. 2163 of 2002, the Ministry of Environment and Forests (for short 'the Ministry') decided the matter by its order dated 17th June, 2003, but in that order the concerned parties were not given hearing and main issues involved were not dealt with by the said Ministry in the proper perspective, therefore, the order dated 17th June, 2003 was set aside and this Court by an order dated 5th September, 2003 directed the Ministry to pass a fresh order. Pursuant to the direction of this Court, the Ministry has passed the order on 8th March, 2004.

3. We have carefully examined the order dated 8th March, 2004 and heard the learned counsel for the parties. In our considered view, the Ministry has again failed to address itself to the important and vital aspects of the issues involved. Therefore, we are again constrained to set aside the said order and directed the Ministry to decide the issues involved in this matter. Two vital aspects on which we require the Ministry to address itself are

(i) the existing authorised construction, and

(ii) Imaginary line.

We direct the Ministry to pass a comprehensive order after hearing counsel for the parties. Looking to the importance of this matter, let the order be passed by the Secretary or Additional Secretary or Joint Secretary of the said Ministry after visiting the site. We also direct the said Ministry to draw an imaginary line on a map and submit that map along with the order.

4. Looking to the urgency of this matter, we direct the said Ministry to pass its order as expeditiously as possible, and in any event within six weeks from the date of receipt of this order.

5. A copy of this order be sent to the Secretary to the Government of India, Ministry of Environment and Forests, Paryavaran Bhawan,CGO Complex, New Delhi, by Speed Post/Fax and by Registered Post with Acknowledgement Due within a week from today.

6. In view of the above directions, this writ petition is disposed of.

7. The parties be supplied authenticated copies.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 1341 OF 2004

Date of decision: 19th August, 2004

Transcript of JUDGMENT/ORDER.

The Hon'ble the Chief Justice Sd/-

The Hon'ble Dr. Justice D.Y.Chandrachud. Sd/-

1. Whether Reporters of Local Papers) may be allowed to see the Judgment ?)No

2. To be referred to the Reporter or not?)No